

DECISION – WALPOLE BOARD OF APPEALS CASE NO. 04-17

APPLICANT

Walsh Brothers Building Co.

LOCATION OF PROPERTY INVOLVED:

**234 Stone Street
Assessors Map 34, Lot 46**

APPLICATION:

A Special Permit under Section 6-C.4.A. of the Zoning Bylaw to allow more than one principal building on a lot located in the (GR) district – for the construction of three (3) single family dwellings within the parcel which has an area of 30,167 square feet, located at 234 Stone Street, Walpole, MA 02081.

On April 5, 2017, a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to granting of the Special Permit requested. The members who were present and voting:

Matthew Zuker, Chairman
Craig Hiltz, Clerk
Susanne Murphy, Member
Mary Jane Coffey, Member
Robert Fitzgerald, Associate Member

VOTE OF THE BOARD:

A motion was made by Ms. Murphy and seconded by Ms. Coffey to grant the Special Permit under Section 6-C.4.A. of the Zoning Bylaw to allow more than one principal building on a lot located in the (GR) district – for the construction of three (3) single family dwellings within the parcel which has an area of 30,167 square feet, located at 234 Stone Street, Walpole, MA 02081.

The vote was 5-0-0 in favor (Zuker, Hiltz, Murphy, Coffey, Fitzgerald voting); therefore, the Special Permit under Section 6-C.4.A. is hereby granted subject to the following conditions:

1. The three (3) single family dwellings shall be constructed as shown on the plans submitted with the Application.

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2. There shall be additional plantings installed along the right side of the property (East) as agreed to by the Applicant during the public hearing.
3. The property owner shall record this Decision with the Norfolk County Registry of Deeds and provide a copy along with proof of recording to the Board of Appeals, Town Clerk and Building Department.
4. When ownership of the property changes, the new owner(s) shall notify the Building Commissioner so as to update records.
5. The Applicant shall receive a Certificate of Occupancy from the Building Department before occupying the three (3) single family dwellings.
6. The three (3) dwellings shall be constructed within the same time frame; there shall not be phased development.
7. Utilities shall be in place as shown on the plans submitted with the Application.
8. The Applicant will acquire a new Curb Cut that is required for this site.
9. The Applicant will work with the Fire Department and E911 regarding the suitability of the driveway regarding access for the three (3) single family homes, along with the adequacy of the nearest fire hydrant location for fire protection.
10. The life safety devices (smoke and CO detectors) in the three (3) single family dwellings shall be in compliance with the current fire code.
11. A hydrant or flushing connection shall be installed at the upper end of the proposed water main.
12. The water line piping shall be CLDI Class 52, and shall be labelled.
13. The Applicant will comply with the requirements set forth by the Town Engineer's letter dated March 3, 2017, and to the Town Engineer's satisfaction.
14. There shall be no additional relief granted.

REASONS FOR DECISION

It is the finding of the Board that the Applicant was able to meet the requirements of Section 6-C.4.A. to allow more than one principal building on a lot, specifically to construct three (3) single family dwellings within the parcel which has an area of 30,167 square feet located in the (GR) district. The Board finds that the three (3) single family dwellings are in character with and follow the intent of the General Residence (GR) District. Accordingly, the Board has determined that the Special Permit requested is warranted.

FURTHER FINDINGS

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

(a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;

The Board finds this condition satisfied.

(b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;

The Board finds that three single family dwellings will not generate so much traffic as to result in an adverse effect on the immediate neighborhood. As such, this criterion is satisfied.

(c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;

This proposal is residential in nature and for three single family dwellings. Thus, the Board finds that there will not be any adverse effect on the neighborhood and this condition is satisfied.

(d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;

The Board finds that as shown on the plans submitted with the Application this condition is met.

(e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;

The Board finds that the proposed project is residential in nature and there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes and this condition is satisfied.

(f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

The Board finds that the proposed use is residential in nature. There is nothing being used, generated or otherwise that would create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate

neighborhood. Therefore, this condition is satisfied.

(g) shall not adversely affect the character of the immediate neighborhood; and

The Board finds that the immediate neighborhood is residential in nature and the proposed undertaking is consistent with the area and immediate neighborhood. Thus, this condition is satisfied.

(h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.

The Board finds that the purpose of the Zoning Bylaw in part states, "to encourage the most appropriate use of the land". The proposed single family dwellings within the General Residence District are consistent with the purpose of the Bylaw. As such, this use, conditioned appropriately, is entirely compatible with the purpose of the Zoning Bylaw and this condition is satisfied.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

WALPOLE ZONING BOARD OF APPEALS

Craig W. Hiltz, Clerk

cc: Town Clerk Engineering Planning Board
Board of Selectmen Building Inspector Conservation Commission

This decision was made on April 5, 2017 and filed with the Town Clerk on April 19, 2017.